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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,587	10/31/2003	T. Scott Kennedy	RCX-022.01	1881
25181	7590	11/21/2007		
FOLEY HOAG, LLP PATENT GROUP, WORLD TRADE CENTER WEST 155 SEAPORT BLVD BOSTON, MA 02110			EXAMINER PALO, FRANCIS T	
			ART UNIT 3644	PAPER NUMBER
			MAIL DATE 11/21/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/699,587

Applicant(s)

KENNEDY, T. SCOTT

Examiner

Francis T. Palo

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-6,8-11 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-6,8-11 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection.

Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on 10/30/07 has been entered.

Response to Arguments

Applicant's arguments filed 10/31/07 have been fully considered but they are not persuasive.

The unamended independent claim and addition of new claim-25 is acknowledged.

Applicant "asserts that **Smak does not teach a tray wherein each cavity is substantially symmetrically open-ended at both ends. In other words, Smak does not teach cavities where the top opening is substantially the same as the bottom opening**".

The examiner submits that Smak '014 teaches in the Abstract, a "plant tray" in which a number of accommodations ("cavities" as claimed) have been made, wherein the cavities are "open at both the bottom and top", and that plates ("ribs" as claimed) extending into the cavities can be provided; further, the hexagonally shaped cavities of Smak, having vertical walls, are thus readable on "non-tapered cavities" as claimed, and, as each cavity is non-tapered and has the same peripheral hexagonal shape, and open on both ends, this configuration is readable on "substantially symmetrically open-ended at both ends" as claimed.

Further, the claim recitation of, "substantially symmetrically open-ended at both ends", contains the limitation "substantially", which is considered to be an indefinite structural limitation, and in consideration of the tapered rib design of Smak, and applicant's "In other words" argument, the shape of the cavities as discussed above is maintained as considered to be, "substantially symmetrically open-ended at both ends", as broadly claimed, in spite of the Smak ribs being broader at the hexagonally base open end and narrower at the opposing hexagonally top open end.

Additionally, the examiner submits that even though the product-by-process limitation recited in the last two lines of the independent claim has been given consideration as being taught by Smak, it is not afforded patentable weight, as Smak teaches the process and therefore the limitation does not serve to structurally distinguish over the prior art.

Finally, new claim-25 reciting a rectangular rib, is considered to be an obvious modification to Smak as follows in the discussed below in the rejection of the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-6, 8-11 and new claim-25 are rejected under 35 U.S.C. 102(b), as anticipated by or, in the alternative, under 35 U.S.C. 103(a), as obvious over **Smak** (WO 00/00014) 2000.

Regarding **claims 1, 3-6 and 8-11**:

As only the independent claim has been specifically traversed, and its rejection maintained as mailed on 7/9/07 and as discussed above, the rejection of claims 3-6 and 8-11 are likewise maintained as previously submitted and are incorporated herein by reference only, as those rejections are a matter of record; further, new claim-25 is presented herein as a 35 USC 102/103 rejection as follows.

Regarding new **claim-25**:

The discussion above regarding claim-1 is relied upon.

Smak '014 discloses, "plates (ribs as claimed) extending into the accommodations (cavities as claimed), can be provided for clamping plants such as bulbs"; the "can be provided" language and "plants such as" language, is read as contemplating either the exclusion of ribs, as for housing other types of plants in the cavities or the utilization of other shapes of ribs such as the rectangular shape as claimed, which could be utilized with the artificial substrate blocks as known in hydroponics cultivation, as Smak further discloses "optionally brought into contact with water" (see Abstract).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to have provided the cavities of Smak with the well-known rectangular rib shape as either a means of reinforcing the tray/cavities or to have utilized the claimed rib shape as a means to retain the artificial growth substrate block as conventionally utilized in hydroponics cultivation practice, as Smak teaches the option of bringing into contact the plant contained within the cavity with water, and as it has been held that where a claimed improvement on a device or apparatus is no more than "the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement," the claim is unpatentable under 35 U.S.C. 103(a).

Ex Parte Smith, 83 USPQ.2d 1509, 1518-19 (BPAI, 2007) (citing KSR v. Teleflex, 127 S.Ct. 1727, 1740, 82 USPQ2d 1385, 1396 (2007)).

Accordingly, Applicant claims a combination that only unites old elements with no change in the respective functions of those old elements, and the combination of those elements yields predictable results; absent evidence that the modifications necessary to effect the combination of elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a). Ex Parte Smith, 83 USPQ.2d at 1518-19 (BPAI, 2007) (citing KSR, 127 S.Ct. at 1740, 82 USPQ2d at 1396.

Accordingly, since the applicant has submitted no persuasive evidence that the combination of the above elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a), because it is no more than the predictable use of prior art elements according to their established functions resulting in the simple substitution of one known element for another, or the mere application of a known technique to a piece of prior art ready for improvement.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

All the references cited on the PTO-892 form teach forms of rib design known in the arts, and except for Smak '014 and Keskilohko '921 all teach the use of a rectangular rib design, and Saarinen '048 in addition to teaching the rectangular rib also teaches a tapered rib, presumably for retention means of bulbs or soilless blocks.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 571-272-6907. The examiner can normally be reached on M-Tu.,Th.-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Francis T. Palo

Francis T. Palo
Primary Examiner
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